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ELECTION COMMISSION, INDIA

NOTIFICATIONS

*Rewa, V.P., the 22nd December 1952***BEFORE THE ELECTION TRIBUNAL, VINDHYA PRADESH AT REWA**

PETITION No. 16/308 OF 1952

Shri Badri Narain Singh *Petitioner.**Versus*Shri Awadhesh Pratap Singh & others *Respondents.*

S.R.O. 2123.—Whereas in this Election Petition an application, filed by the petitioner for withdrawal of his petition, has been granted by order of this Tribunal dated 20th December, 1952, notice of this withdrawal is hereby published in the *Gazette of India* under Section 110, sub-section 3(b) of the Representation of the People Act, 1951. Any person, who might himself been a petitioner, may, within 14 days of this publication, apply to be substituted as petitioner in place of the party withdrawing.

The next date of hearing in this petition has been fixed as 19th January, 1953.

(Sd.) E. MUKARJI, *Chairman.*(Sd.) G. L. SHRIVASTAVA, *Member,*(Sd.) U. S. PRASAD, *Member,*
Election Tribunal, Rewa.

[No. 2.]

New Delhi, the 27th December 1952

S.R.O. 2124.—Whereas the election of Shri Lalooabhai Kishordas Maniar of Sherdi Pith Dola, Harris Road, Bhavnagar, Saurashtra, as a member of the Legislative Assembly of Saurashtra from the Talaja-Dattha Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1952) by Shri Prabhudas Ramjibhai Mehta of Takhteshwar Plot, Surya Mahal No. 1, Bhavnagar, Saurashtra;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 335 OF 1952

CORAM

Shri N. L. Vyas, M.A., LL.B.—*Chairman.*

Members of the Election Tribunal

Shri V. V. Mehta, B.Sc., LL.B.

Shri H. C. Shah, B.A., LL.B.

In the matter of the Representation of the People Act, 1951,

and

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951,

and

In the matter of the Election Petition presented thereunder by Shri Prabhudas Ramjibhai Mehta residing at Surya Mahal No. 1, Takhteshwar Plot, Bhavnagar (Saurashtra),

Versus

Laloobhai Kishordas Maniar, residing at Sherdi Pith Dela, Haris Road, Bhavnagar (Saurashtra).

Shri J. C. Mehta, Advocate, for the petitioner Shri Prabhudas Ramjibhai Mehta,

Shri C. N. Shah, Advocate, for the respondent Shri Laloobhai Kishordas Maniar.

This is a petition for declaring the election to the Saurashtra Legislative Assembly from Talaja-Datha Constituency as wholly void. The petition is made by a candidate whose nomination was rejected by the Returning Officer. There were two candidates, including the petitioner, who had filed nomination papers. Three nomination papers were filed by the petitioner simultaneously on 28th August 1952. In each nomination paper he had declared himself as his election agent. The nomination papers were scrutinised on 30th August 1952. The Returning Officer found that the petitioner had not written his own name as the election agent in the declaration in the nomination paper, but had simply signed the declaration. He, therefore, held that the declaration about the appointment of the election agent was not in the form prescribed by Section 33, sub-section 3, and consequently rejected the nomination under clause (d) of sub-section (2) of Section 36 of the Representation of the People Act. As the respondent was the only other candidate whose nomination was found to be valid, he was declared as duly elected on 30th August 1952.

2. The petitioner has, therefore, made this petition, and has urged that the Returning Officer was in error in rejecting his nomination. He has alleged that the printed portion of the declaration in the three nomination papers relating to the appointment of some other person as election agent was struck off by him, and therefore the printed portion relating to the appointment of the candidate himself as election agent had only remained, and consequently it was not necessary for him to write his own name in the declaration. It was, therefore, urged that all the nomination papers had valid declaration about the appointment of himself as his election agent.

3. The respondent urged, relying particularly on the explanatory foot-note in the form of the nomination paper in Schedule II, that the name of the election agent has to be written in the declaration in the nomination paper, even when the candidate is the election agent. It was urged on his behalf that mere striking off of the printed portion in the declaration relating to the appointment of some other person as election agent was not sufficient compliance with the provisions of Section 33, sub-section 3. On these respective contentions the following points for decision were settled:—

- (1) Was the nomination of the petitioner illegally and improperly rejected by the Returning Officer?
- (2) If the answer to point No. 1 is in the affirmative, has it affected materially the result of the election?

The Tribunal's finding is that the petitioner's nomination was improperly and illegally rejected by the Returning Officer, and that the result of the election has been materially affected thereby.

4. The petitioner gave evidence to prove that he had himself struck off the printed portion in the declaration in the three nomination papers relating to the appointment of some other person as the election agent. The three nomination papers filed by the petitioner were called for by us, and we found that in the declaration in each nomination paper, the printed portion relating to the appointment of some other person as election agent was struck off. The respondent did not give evidence himself or examine any witness to prove that this was not done by the petitioner before filing his nomination papers. Beyond making a suggestion in cross-examination of the petitioner that the ink in which the printed portion was struck off was different from the ink in which the forms were filled, the respondent has adduced no evidence whatever to show that the three nomination papers filed by the petitioner were not in the condition in which they were produced before us by the Returning Officer. We are, therefore, satisfied that the petitioner had struck off the printed portion in the declarations in the three nomination papers before filing them before the Returning Officer. Then the declaration as printed at the foot of the three nomination papers would read as follows:—

"I hereby declare that I have appointed myself as my election agent."

5. But it was urged on behalf of the respondent that the petitioner should have also written his name in the declaration. In support of this contention reference was made to the explanatory foot-note in the form of the nomination paper in Schedule II. The foot-note is as follows:—"Only one election agent is to be appointed by a candidate. If more than one nomination paper is delivered by or on behalf of a candidate for election in the same Constituency, the name of the election agent so appointed, whether such agent is the candidate himself or any other person, shall be specified in each such nomination paper". This foot-note would no doubt support to some extent the contention of the respondent.

6. But the form of the nomination paper given in Schedule II would clearly show that no name of the election agent has to be written when the candidate himself is the election agent. The form of the declaration given in Schedule II is as follows:—

"I hereby declare that I have appointed son of..... /myself of
..... to be my/as my election agent."

This form would clearly show that when the candidate has appointed himself as his election agent, he has not to write his name in the declaration. The foot-note is, therefore, misleading, and against the form of the declaration given in Schedule II.

7. Moreover sub-sec. 3 of Sec. 33 requires the candidate to name the election agent in the declaration, only when some person other than himself is appointed such agent. That sub-section is as follows:—"Every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under this Act for the appointment and who shall be named in the declaration." This sub-section would clearly show that the agent has to be named only when he is other than the candidate. The form of the declaration in Schedule II is, therefore, correctly in conformity with the provisions of this sub-section. Consequently, the foot-note above referred to is at variance with the provisions of sub-section 3 of section 33 in so far as it requires the candidate to name himself in the declaration. To this extent the foot-note has to be disregarded.

8. Then it is clear that the petitioner had made the declaration in all the three nomination papers about the appointment of the election agent in the prescribed form and as laid down in sub-section 3 of Section 33. If that is so, the Returning Officer had improperly rejected the nomination of the petitioner.

9. Then there cannot be any doubt that the rejection of the nomination has affected materially the result of the election. As respondent was the only other candidate, he was returned unopposed. In these circumstances, it was conceded on behalf of the respondent, that the result of the election must be considered to have been materially affected. Then the election must be declared as wholly void. We also feel that the respondent should pay the costs of the petitioner, as he has opposed the petition. We assess the costs at Rs. 75.

ORDER

The election from the Talaja-Datha Constituency to the Saurashtra Legislative Assembly held in August 1952 is declared as wholly void. The respondent shall pay Rs. 75 as the costs of this petition to the petitioner.

RAJKOT;
The 20th December, 1952.

(Sd.) N. L. VYAS, *Chairman*,
Election Tribunal.
(Sd.) VASANTLAL V. MEHTA, *Member*,
Election Tribunal.
(Sd.) HIRALAL C. SHAH, *Member*,
Election Tribunal.
[19/335/52-Elec.III.]

S.R.O. 2125.—Whereas the elections of Dr. Homeswar Deb Choudhury of Village Patacharkuchi, Assam, and Shri Baikunthanath Das of Village Goalbil, P.O. Dhamdhama, Assam, as members of the Legislative Assembly of Assam from the Patacharkuchi-Barama constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Naranarayan Goswami of Manipur Basti, Town Gauhati, District Kamrup, Assam;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order on the said Petition;

NOW THEREFORE, in pursuance of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 39 OF 1952

PRESENT:—

Shri Ashutosh Das, Retd District Judge, (W. Bengal)—*Chairman*.
Members
Shri Umakanta Gohain, Retd. Addl. Judge (Assam).
Shri U. N. Bezbaruah, Barrister-at-law, Gauhati.
of the Election Tribunal, Assam, Gauhati.

Dated Gauhati, the 16th December, 1952

In the matter of a petition under Section 81 of the Representation of the People Act, 1951, calling in question an election;

And

In the matter of:—

1. Naranarayan Goswami—*Petitioner*.

Versus

1. Dr. Homeswar Deb Choudhury,
2. Baikuntha Nath Das.
3. Birendra Kumar Das,
4. Chakrapani Das,
5. Chailendra Ram Chotary,
6. Madan Mohan Goswami and
7. Prasanna Chandra Pathak.—*Respondents*.

Petitioner—represented by:—

1. Shri S. Lahiri, Advocate-General, Assam,
2. Shri S. K. Ghose, Advocate, and others.

Respondent No. 1.—represented by:—

1. Shri Bhabesh Chandra Baruah, Advocate,
2. Shri Hareswar Goswami, Barrister-at-law and others.

JUDGMENT

The petition is presented questioning the election of the returned candidate, Dr. Homeswar Deb Choudhury, Respondent No. 1, to the seat other than the reserved one

of the Legislative Assembly, from the Patacharkuchi-Barama Constituency, of the District of Kamrup, during the last General Election. It was a two-member constituency, one of the seats being reserved for a member of the Scheduled Tribe. The candidates, who contested the Election, were the petitioner and the respondents Nos 1 to 6. The respondent No 7 withdrew his candidature under Section 37 of the R. P. Act. It may be stated here that the respondent No. 1 came forward with a plea on the date on which the final hearing of the petition commenced, to state that there was one more similar candidate, who had withdrawn his candidature under Section 37 of the R.P. Act, and that he was a necessary party to the Election Petition, in whose absence, the petition is liable to dismissal. The respondent No. 1 was not allowed to raise the plea at such a late stage, and the objection was over-ruled, as per our order No. 23, dated 8th December 1952, which is made annexure No. 1 to the report.

Respondents 2, 3 and 5 of the case were candidates, who were alone eligible to stand for election to the reserved seat. The poll was held in the case on 19th January 1952, and the counting of votes, on 10th February 1952, and the result of the Election was declared on the same day, under Section 66 of the R.P. Act, the result being, as shown in Ext. 4, which is the account in form No 16, Respondent No. 1 was declared to have been elected to the seat other than the reserved one, as having obtained the largest number of valid votes which came up to 13809, the petitioner having polled the next largest number, his figure being 13793, the respondent No 1 having thus a lead over him by 16 votes only. To the seat, reserved for the Scheduled Tribe, respdt. No. 2 was declared to have been elected, he having polled 12994 of valid votes, this being the highest poll among the candidates eligible to stand for this seat.

It may be noted that the poll for the election to the seat of the House of the People from Barpeta Constituency of the District of Kamrup took place simultaneously, and there were 4 candidates, contesting the election, namely, Belu Ram Das, Bipinpal Das, Kaniakhya Ram Lauah and Bhabananda Datta. There was a certain polling Centre which bore the number 86, and described as Garbhitar L. P. School Centre. There was poll for both the Assembly and the House of the People at the Centre, one separate Section of the Station being allotted to each of the constituencies, and, in accordance with the prescribed plan of arrangement, a voter was first to enter into the Section for the Assembly, and after having cast his vote there, to enter the other section. There was one Officer appointed to preside over the poll of both the sections. It is further found from Ext. 3, which was the list of the polling materials supplied to the Presiding Officer of the Station, that the ballot-papers supplied for use at the Centre were two series for use of the Assembly votes, namely, (1) the series bearing numbers 586601 to 589300, and (2) a second series bearing the same numbers, with the suffix A, and for use of poll for the House of the People, one series bearing the numbers 375601 to 376300.

At the time of the counting of votes of the Assembly, which took place on 10th February 1952 (the counting of votes of the House of the People taking place 3 days after, as deposed to by the Returning Officer, O.P.W. 1, Shri S. J. D. Carvalaho), it was found that the ballot-papers meant for use for the House of the People, had been cast in the ballot-boxes of the different candidates of the Assembly Constituency, which were all rejected by the Returning Officer, the ballot-papers, thus rejected, were as follows, for the different candidates.—The petitioner, 28, respondent No. 1, 2, respondent No. 2, 41; respondent No. 3, 1, respondent No. 4, 3, respondent No. 5, 10, respondent No. 6, 2, making a total of 87. These figures, we get actually from the rejected ballot-papers, which have been produced before us. On the otherhand, we get as many as 99 ballot-papers of the Assembly, cast in the boxes of the different candidates of the House of the People, and that in the following way.—81, in the box of Belu Ram Das, 8, in the box of Bipinpal Das, 10, in the box of Bhabananda Datta. Evidently, as it would appear, there had been inter-change of the first book of ballot-papers meant for each Constituency, the book containing the starting serial numbers meant for use of the Assembly, without the suffix A, going over to the Polling Officers of the House of the People, and the one containing the starting serials of the House of the People, coming over to the Polling Officers of the Assembly Section. It would further appear that the Polling Officers of the Assembly Section, while thus issuing one wrong ballot-paper from such a book, issued however the correct ballot-papers with suffix A to the same voter. It would appear on a reference to the marked electoral-rolls of the Assembly.

From all these, it has been contended, on behalf of the Petitioner in substance, that as this was really an inter-change of ballot-papers of the same Polling Station, meant for use of the two Constituencies, which, again, was due to the mistake of the Officers, entrusted with the conduct of the poll and when there can be no doubt

about that the intention of the voters had really been to cast votes, in favour of the different candidates, in whose boxes they had cast these ballot-papers with the wrong serials, the votes should be accepted by the Tribunal, as having been validly cast. If this contention of the petitioner is accepted, the net result would be that the petitioner would have a lead of 10 votes over the returned candidate, the respondent No. 1. The petitioner in the circumstance claims for a declaration that the election of the returned candidate, respondent No. 1 be declared void, and that the petitioner be declared to have been duly elected to the seat.

In answer to this, the respondent No. 1's plea, (who alone has appeared to contest the case,) is, in substance, that the aforesaid votes, cast in wrong ballot-papers were, indeed, properly rejected, by the Returning Officer. The Returning Officer was bound to do so under the provision of Rule 47(1)(c) of the Representation of the People (Conduct of Election and Election Petition) Rules, 1951. That the Returning Officer had no opportunity of knowing ever before he opened the ballot-box of the Station for counting on 10th February 1952, that wrong ballot-papers had, indeed, been issued through the mistake of the Officers entrusted with the conduct of the Poll at the Station, and so, he had not the opportunity of getting this irregularity regularised. That the Tribunal can regularise such an irregularity only in a case where the Returning Officer could himself do it but omitted to do, and, in no other case. That in fact, also the Tribunal could not come to a finding of relevant facts for the purpose of establishing the petitioner's case here, without referring to the marked electoral-rolls and to do this, would be to infringe the secrecy of the ballot, which is not open to the Tribunal also. It was lastly contended that even if the rejected votes, referred to above, be accepted as valid by the Tribunal, the whole election, should, in the circumstance of the case, be set aside, and, this is for the following reasons:—

1. That the margin of difference in the poll between the petitioner and the respondent would be found to be very small, namely, only 10.

2. That there is no evidence here to guarantee that while these 28 votes, cast in favour of the petitioner in wrong ballot-boxes are accepted, there was no duplication, in that the ballot-papers which were simultaneously issued to the same voters (which is, indeed, found to have been done in the correct ballot-papers) may not also have been cast in the petitioner's box, in which case, there would be duplication of these votes, which is not permissible.

We may at once dispose of here these last two points, as above, urged on behalf of the respondent, as they bear no scrutiny. About the second of these points, it may at once be said that all the accepted ballot-papers of the petitioner for this Centre have been produced before us, and there is, indeed, found no instance of duplication. With regard to the first point, it may be observed that the law does nowhere contemplate that in a case of a narrow margin, the whole election is to be set aside, without a petitioner having been declared as duly elected, even if he succeeds in establishing the necessary facts. It may just be observed in this connection that under Section 67 of the Representation of the People Act, 1951, there is even the provision for deciding the issue between the two candidates polling equally, by means of lottery.

We may note here that in his written-statement, the respondent No. 3 made some recriminations against the petitioner by way of challenging his claim to the seat, and they were all in the nature of some corrupt and irregular practices, alleged to have been resorted to by, and on behalf of, the petitioner. The Chairman did, by the Order No. 5, dated 5th June 1952, disallow these recriminations to be made, as they had not been made within the statutory period of limitation, and the deposit of security, as required in such a case, had not also been made. This Order, made by the Chairman singly, was since taken by the other Members of the Tribunal into consideration, when the final hearing of the case commenced, and confirmed, and the respondent did not choose to canvass the matter again before the Full Tribunal. The above Order, made by the Chairman, is made annexure No. 2 to this report.

The decision of the case thus virtually rests here on the single point, whether the above 28 votes, cast in favour of the petitioner in the ballot-papers, meant for the use of the House of the People, was improperly rejected by the Returning Officer, and Issue No. 4, which was framed on the point, and is reproduced below, was the only issue, urged on behalf of the petitioner, at the time of the final hearing, and is the only issue, that is left for our decision, besides the ancillary issues Nos. 6 to 8. There were some more issues, framed in the case, on various other grounds, taken by the petitioner, which were all given up by him, at the time of trial.

Issues Nos. 4 and 6 to 8 were framed, as below:

Issues

4. Were the 28 votes, cast in favour of the petitioner in the ballot-papers prescribed for election to the House of the People, improperly rejected by the Returning Officer, at the time of counting of votes? Were these wrong ballot-papers, issued by the Polling Officers through mistake, as alleged in para. 19 of the election-petition? Has the result of the election been materially affected thereby?

6. Is there a sufficient ground for declaring the election of the respondent No. 1 void?

7. Is there sufficient ground for declaring the whole election void?

8. Is there sufficient ground for declaring the petitioner, as duly elected?

We take up all the issues together for consideration, as issues Nos. 6 to 8 are mere ancillary to issue No. 4.

We have already found that there has been, in fact, inter-change of ballot-papers in the case, due to the mistake of the Officers, entrusted with the conduct of the poll. We do further find from the evidence that the intention of the voters was clear, to wit, to cast votes in these wrong ballot-papers, in favour of the candidates of the seat of the Assembly, in whose boxes, they were actually found. Such intention being bound clear, the above irregularity in the votes having been cast in wrong ballot-papers, is held to be of a very technical character, and none of a vital nature affecting any of the fundamental principles of Election. This is an irregularity which, in our view, may quite properly be looked into and condoned by the Tribunal. The same was the view taken by the Tribunal which decided the case of Gidwani Choitram Partabrai, which is reported in the Gazette of India, Extraordinary, dated 5th August 1952, at page 2016, and we are in complete agreement with the view, expressed therein. As we held in connection with the Election-Petition No. 26 of 1952, which we have recently decided the Representation of the People (Conduct of Elections and Election-Petitions) Rules, 1951, which are Statutory Rules, made under Section 169 of the R.P. Act, 1951, are merely directory, and any violation of such Rules may be regularised. The contention of the respondent, that the Tribunal may regularise such irregularity and violation of Rules only in cases, where the Returning Officer could himself get this done, but omitted to do so, or, only in cases, where the Returning Officer's own Order is improper and not according to the Law or the Rules, appears to be wholly untenable. There is nothing in the law to restrict the power of the Tribunal thus. Even if the Returning Officer be held justified in the circumstance of the case, to reject the ballot-papers under Rule 47(I)(c), as he had not the opportunity to regularise the irregularity, committed by the Officers, entrusted with the conduct of the poll, the Tribunal appears fully competent to go into the whole question, and condone such irregularity, if it is in a suitable case, for doing so. The same was the view taken in Gidwani's case, referred to above, in which too we find ourselves in full agreement. We may just refer to the provision of Section 100(2)(c) of the R.P. Act, 1951, to show that the Legislature had really, intended to give the Tribunal full powers to consider all the relevant matters in connection with an enquiry about whether the votes had been improperly rejected or accepted in a certain case whether there was non-compliance with the provisions of the Constitution or of the R.P. Act, 1951, or such other matters. The provision, contained herein, would clearly show that the Tribunal had the power to enter into, and examine the whole of such questions judicially, without being limited in any way, as has been sought to be contended, on behalf of the respondent here. In this connection, it may further be noted that the Returning Officer's conduct is not above some comment. It appears that such cases of interchange of ballot-papers, through mistake, on the part of the Presiding and the Polling Officers, had come to the notice of the Election Commission before this, and some further instructions to guard against the same, had been issued by the Commission, which again had been circulated by the Chief Electoral Officer, Assam, among the Returning Officers by a forwarding note, a copy of which is marked Ext. 6. In para 2 of the letter, a valuable suggestion was made in this regard, which was that before opening the ballot-box for counting, the Returning Officers should refer to the account in form No. 10, as is to be submitted by each Presiding Officer with a view to ascertain if there had, in fact, been any wrong issue of ballot-papers and in the event of such a discovery, to report the matter to the Election Commission for regularising the irregularity. The Returning Officer, in the present case, explained his difficulty by stating that the Presiding Officer of this particular Centre had indeed returned the form No. 10, blank. If so, the more was the reason for his being on the guard. He had received the above instructions from the Chief Electoral Officer, Assam, on 20th January 1952, as appears, and the counting did not take place

till about 3 weeks later. It was further contended, on behalf of the petitioner, however, that the irregularity, referred to by the Returning Officer, in rejecting the aforesaid ballot-papers, did not really fall within the scope of Rule 47(I)(c), in-as-much as there was really one Polling Station provided here for poll, of both the Assembly and the House of the People, and that in order to attract the application of Rule 47(I)(c), there was to be any inter-change of ballot-papers, as between two different Polling Stations, which was not the case here. The same point of a correct interpretation of the above Clause was canvassed in Gidwani's case, where that Tribunal accepted the view as has been urged here, on behalf of the petitioner. It is not, however, necessary for us to commit to any opinion on the point. On behalf of the respondent, the case of Gidwani was sought to be distinguished on the fact that in that case, there was a whole-sale inter-change of ballot-papers in one of the two Booths of the Polling Station, and the Tribunal could, in such a case, discover the irregularity, without referring to the marked electoral-rolls, and to refer to such rolls even by the Tribunal, as would be necessary here for the purpose is open to the objection that it would be tantamount to infringement of the secrecy of ballot. We cannot at all appreciate the force of this argument. It cannot, to our mind, be seriously contended that inspection of such rolls by the Tribunal with a view to consider fully, the issues arising before it, could be open to any objection under the Law, even if the secrecy of the ballot may have to be infringed to some extent. Then, in Gidwani's case, the rolls were really inspected by the Tribunal to arrive at their decision. So, really, there is no distinguishing feature in that case. We may, in this connection, refer to the provisions contained in Rule 52 of the Representation of the People (Conduct of Election and Election-Petitions) Rules, 1951, which would clearly indicate that inspection of such sealed papers by the Tribunal, could be open to no objection under Law, though the same may go to infringe the secrecy of the ballot.

We, therefore, hold that none of the contentions, urged on behalf of the respondent, on the point under consideration, may be sustained, and we hold that the 28 votes, found to have been cast, in favour of the petitioner in forms, meant for the House of the People, at this particular Centre, are to be accepted as valid votes. If so, as already noticed the petitioner is found to have a lead of 10 votes over the respondent in the total poll.

The election of the respondent No. 1 is accordingly declared void, and the petitioner is to be declared as having been duly elected to the seat.

With regard to cost, as this is a case of improper rejection of some votes by the Returning Officer, and as, further, the petitioner did not eventually urge several other grounds taken by him to question the election of the respondent No. 1, we would put each party to his respective cost.

ORDER

The election of respondent No. 1 is declared void and the petitioner is declared to have been duly elected to the seat of the Assam Legislative Assembly, other than the reserved one in respect of Patachar-kuchi-Barama Constituency. Parties are to bear their respective costs of the case.

(Sd.) U. N. BEZBARUAH,

(Sd.) U. K. GOHAIN,

Members,—16-12-52.

(Sd.) A. Das,

Chairman,—16-12-52.

ANNEXURE No. 1

Order No. 23, dated the 8th December 1952

A petition has been filed on behalf of the respondent No. 1 to plead that one, Prasanna Chandra Pathak and another, Suriva Brahman were duly nominated candidates and they are therefore necessary parties to the election-petition, under provision of Section 82 of the R. P. Act. As a matter of fact, Prasanna Pathak did intervene in the case within the prescribed time and he was impleaded at his request. Whether Suriva Brahman was, in fact, a duly nominated candidate is a question of fact, which we cannot allow to be raised at this stage. Besides this, it was Suriva Brahman who was principally interested in the proceeding, if he was really a nominated candidate; but he did not intervene in spite of the necessary publication, and so, there arises no question of prejudice in the case. Accordingly, we reject the present petition of the respondent to raise this issue at this stage.

The orders made by the Chairman singly, in this case, are taken into consideration by the other Members and confirmed. No party questions the above orders the Chairman, made singly

1) U N BIZBARUAH,
d) UMAKANT GOHAIN,
Members,—8-12-52

(Sd) A. DAS,
Chairman,—8-12-52.

ANNEXURE No 2

Order No 5 dated the 5th June 1952

Heard learned Advocates With regard to the statements in para 15 of the S. of respondent No 1 they are in the nature of recrimination against the petitioner to the seat and these not having been submitted to the Tribunal within 14 days of the publication of the election-petition in the local Gazette, under Sec 90 of the R P Act 1951 which was 14-5-52, and, further, the security, as required by Sec 117 of the Act not having been given within the above time-limit, these above statements cannot be admitted for consideration of the Tribunal on this point. The learned Advocate for the respondent No 1 submitted that these facts were not indeed pleaded to recriminate against the claim of the petitioner to the seat but really with the object of showing that but for the corrupt practices alleged by the respondent as having been practised by and on behalf of the petitioner the respondent would have fared better in the poll. I cannot agree with the learned Advocate, on this. This would really be bringing in in a round about way the recrimination against the petitioner though the same is hit by the law of limitation. Really apart from the question of recrimination of the petitioner by these alleged facts it is not really pertinent to the enquiry by the Tribunal that the respondent would have fared better in the poll but for the alleged corrupt practices. It was also urged by the learned Advocate for the respondent No 1 that I as Chairman sitting singly now, cannot decide the question. As against this the learned Advocate for the petitioner says that I am indeed competent to decide the point now and he refers to the provision contained in Sec 86 (5) of the R P Act, 1951. I accept the contention and give my ruling as above. Without my assuming some such order the stage preparatory to the commencement of the actual trial cannot be passed through.

Issue settled. To 13-6-52 to cite witnesses and to call for documents or take any necessary steps.

(Sd.) A. DAS,
Chairman,—5-6-52.
[No 19/39/52-Elec III]

P. S. SUBRAMANIAN,
Officer on Special Duty

